



# *Overview and Examples of Contested Legislative Elections*

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## Introduction

### *I. Each Chamber Has Exclusive Constitutional Authority to Judge its Members' Elections*

This document provides examples of how each chamber of the Vermont General Assembly has exercised its exclusive constitutional authority to determine the winner of a “contested legislative election,” which is a legislative election result that is challenged. Pursuant to [Vt. Const. Ch. II, § 14](#), the House of Representatives has the authority to “judge of the elections and qualifications” of its members, and via [Vt. Const. Ch. II, § 19](#), the Senate has “the like powers to decide on the election and qualifications of . . . its members . . . as are incident to, or are possessed by, the House of Representatives.”

We know from the 1983 Vermont Supreme Court case Kennedy v. Chittenden<sup>1</sup> that this constitutional House authority “places the final determination of the election and qualifications of its members exclusively in the House of Representatives of the General Assembly as part of its legislative powers.”<sup>2,3</sup>

The Court’s holding in Kennedy v. Chittenden in interpreting the House’s constitutional authority to “judge member elections” is consistent with the Court’s subsequent 2001 interpretation of the House’s authority in Vt. Const. Ch. II, § 14 to “judge member qualifications”: In Brady v. Dean,<sup>4</sup> the Court similarly held that “where the state legislature is made the judge of qualifications of its members by a provision of the state constitution, the legislature has the sole authority to do so, and courts must refrain from interfering in that determination.”<sup>5</sup>

In other words, because Vt. Const. Ch. II, § 14 provides the House with the authority to judge its members’ elections and qualifications, that House authority is *exclusive*, meaning, no other entity controls it. This is a canon of constitutional construction known as *expressio unius est exclusio alterius*—or, the expression of one thing is the exclusion of any alternative—which means that when the Constitution declares a thing to be done in a particular manner or way, it is necessarily implied that it shall not be done in any other way.<sup>6</sup> Accordingly, the Vermont House and Senate’s separate authority to judge a contested election of one of its members belongs to that chamber alone.

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<sup>1</sup> Kennedy v. Chittenden, 142 Vt. 397 (1983).

<sup>2</sup> Id. at 399.

<sup>3</sup> And we turn to Vermont Supreme Court caselaw to understand Vermont constitutional legislative authority because in the checks and balances built into the separation of powers among the three branches, “it is the province of the court to decide whether Vermont’s laws comply with the State Constitution,” Brigham v. State, 179 Vt. 525, 528 (2005); “[i]t is the function of the courts to maintain constitutional government,” C.O. Granai v. Witters, Longmoore, Akley & Brown, 123 Vt. 468, 470 (1963); and the Vermont Supreme Court is the “final interpreter of the Vermont Constitution,” State v. Read, 165 Vt. 141, 153 (1996).

<sup>4</sup> Brady v. Dean, 173 Vt. 542 (2001).

<sup>5</sup> Id. at 544-545.

<sup>6</sup> See Opinion of the Judges of the Vermont Supreme Court on the Constitutionality of “An Act Providing for Soldiers Voting”, 37 Vt. 665, 672 (1865).

Note also that this Vermont legislative authority is similar to each U.S. Congressional chamber's authority to "be the Judge of the Elections, Returns and Qualifications of its own Members" as set forth in [U.S. Const. Art. 1, § 5](#).<sup>7</sup> And it is a power that other state constitutions provide to their legislative chambers.<sup>8</sup>

## *II. Overview of Kennedy v. Chittenden, 142 Vt. 397 (1983)*

In the 1982 general election for the House Chittenden-6-2 district, Candidate Chittenden received 788 votes to Candidate Kennedy's 783. Thereafter, Ms. Kennedy's requested recount appeared to confirm Mr. Chittenden's narrow margin of victory, but Ms. Kennedy subsequently used statutory election law in effect at the time to contest Mr. Chittenden's election in Superior Court on the basis of asserted checklist irregularities. After a hearing, in accordance with that prior statutory law, the Superior Court issued a judgment order invalidating the general election results and ordered a new election.<sup>9</sup>

That Superior Court order resulted in no candidate receiving a certificate of election and therefore, no Representative being seated for that district on Day 1 of the 1983 Biennial Session (January 5, 1983).

Later in the month on January 21, 1983, on appeal in Kennedy v. Chittenden, the Vermont Supreme Court vacated the Superior Court order as an unconstitutional violation of both legislative and judicial power, holding that the Superior Court did not have jurisdiction to adjudicate a challenge to a legislative election, nor did the Legislative Branch have authority to delegate that exclusive legislative power to the Judicial Branch.

To summarize, the Supreme Court held that the prior statutory law purporting to confer to the Superior Court general jurisdiction to hear and determine matters relating to elections and fashion appropriate relief—and the Superior Court's application of it to this legislative election by vacating the general election results and ordering a new election—violated separation of powers because Vt. Const. Ch. II, § 14 provides the House with the exclusive authority to judge its members' elections and qualifications, and the applicable statutory law therefore was an improper delegation of legislative powers to the Judicial Branch; and also because the Vermont Constitution requires that judicial decisions lead to a final, enforceable result that is not merely informative or advisory as described in In re Constitutionality of House Bill 88, 115 Vt. 524 (1949).

Accordingly, a subsequent Superior Court order dated January 24, 1983 certified the December 7, 1982 recount results (Chittenden, 788; Kennedy, 783); Rep. Chittenden was seated on January 25, 1983; and the House proceeded with its exclusive constitutional authority to judge this member's election upon Ms. Kennedy's petition.

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<sup>7</sup> For more information on how the U.S. House of Representatives has exercised its authority to judge its members' elections, see ["Procedures for Contested Election Cases in the House of Representatives," Congressional Research Service \(Oct. 18, 2016\)](#).

<sup>8</sup> See *Mason's* § 560 (each house of a legislature is the judge of the elections and qualifications of its members).

<sup>9</sup> Kennedy v. Chittenden at 398.

### *III. The Role of Superior Court Recounts in Legislative Elections*

In statutory election law, [17 V.S.A. ch. 51, subch. 9](#) (recounts and contest of elections) provides the process for a candidate who has lost a federal, statewide, county, or legislative office by a certain threshold to request a recount, which is to be supervised by the applicable Superior Court and administered by the county clerk. In [§ 2602j\(c\)](#) of the subchapter, after a hearing and the Superior Court’s final determination on the recount results, the Superior Court is required to “issue a judgment, which shall supersede any certificate of election previously issued[.]”

In a precursor to Kennedy v. Chittenden, in a 1972 appeal from a Superior Court order that refused to certify the results of a recount of a contested Senate election, the Vermont Supreme Court in In re Smith<sup>10</sup> confirmed that the recount statutes only make a Superior Court judge “a special officer to supervise” the recount, with the judge’s “most important [duty] being to certify the result.”<sup>11</sup> In Smith, the Supreme Court vacated the portion of the lower Superior Court order that refused to certify the recount results for the Senate race, which refusal was due to “large discrepancies revealed by the recount and the irregularities in the hand[l]ing of the ballots brought to light by the proceedings.”<sup>12,13</sup>

The Supreme Court stated that “[r]ecounts seldom reach results without discrepancy. Under the controlling statute, we view the proper function of the superior judge to be the reporting, by way of certification, of the results of the recount, however great its variation from the original tally . . . leaving the validity to the Senate for determination” under Vt. Const. Ch. II, § 19.<sup>14,15</sup> The Court accordingly amended the lower court order in order to certify the recount results and to direct the county clerk to issue certificates of election to the candidates with the highest total votes in the recount.<sup>16</sup>

Similarly, in regard to each Congressional chamber’s analogous exclusive constitutional authority to judge its members’ elections and qualifications as set forth in [U.S. Const. Art. 1, § 5](#), the U.S. Supreme Court upheld the ability of a state to conduct a recount of a U.S. Senate election, confirming that such a state recount “does not prevent the Senate from independently evaluating the election any more than the initial count does. The Senate is free to accept or reject the apparent winner in either count, and, if it chooses, to conduct its own recount.”<sup>17</sup>

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<sup>10</sup> In re Smith, 131 Vt. 24 (1972).

<sup>11</sup> Id. at 26.

<sup>12</sup> Id.

<sup>13</sup> The Superior Court was operating under a former recount statute, which, like current law’s [17 V.S.A. § 2602j\(c\)](#), provided that the recount results superseded the original general election results.

<sup>14</sup> Id.

<sup>15</sup> The Court acknowledged that the “discrepancies are disturbing,” but noted that the parties involved followed the statutory processes for conducting the recount and “no actionable fraud had been uncovered. In any event, since it is the duty of the [recount] committee merely to count valid ballots furnished by the appropriate custodians, and the duty of the presiding judge merely to certify that count, issues outside that duty must otherwise be disposed of, consistent with constitutional requirements.” Id. at 26-27.

<sup>16</sup> Id. at 27.

<sup>17</sup> Roudebush v. Hartke, 405 U.S. 15, 25-26 (1972). At FN24, SCOTUS provided examples of the U.S. Senate conducting its own recounts.

#### *IV. Statutory and Legislative Procedure for Contested Legislative Elections*

After the Vermont Supreme Court holding in Kennedy v. Chittenden, the General Assembly amended statutory election law regarding contested elections to clarify the chambers' exclusive authority to judge their members' elections.

Now, in 17 V.S.A. § 2603 (contest of elections), the law allows individuals to contest an election in Superior Court, "other than for the General Assembly[.]"<sup>18</sup> Conversely, contested House elections are covered by 17 V.S.A. § 2605 (House of Representatives) and contested Senate elections are covered by 17 V.S.A. § 2606 (Senate). Each of those two statutes provides a process for a candidate or specified voters to request the applicable chamber to judge a member's election—not later than 20 days after the general election or 10 days after a final Superior Court judgment on a recount—by filing a written request with the Secretary of State, who in turn is required to notify the Attorney General.

Both of those statutes require the Attorney General to "investigate the facts, take such depositions as may be necessary, prepare an opinion on the law and facts," and provide the Attorney General's report and opinion to the chamber's parliamentary officer at least 10 days before the General Assembly convenes.

In legislative practice, the resulting Attorney General report is then referred to the applicable committee of jurisdiction, which is thereafter tasked with making a recommendation to its chamber regarding how to judge the contested legislative election. In some instances, the matter has been referred to an existing standing committee; on other occasions, the chamber has created a special committee for this purpose.

For some contested legislative elections, the chamber has provided its committee of jurisdiction with the authority to subpoena witnesses, ballots, and other relevant documents. And on some occasions, the committee has conducted its own recount of the election.<sup>19</sup> The nature and scope of a committee's review is generally dependent upon the basis for the contested election. For example, the House committee reviewing 1985's CHI-4 Stokes/Painter contest conducted a complete recount for a petition that raised the issue of counting errors in the election or recount, or both. Conversely, the Senate committee reviewing 1981's LAM Manchester/Hastings contest only took testimony for a petition that raised the issue of the timely filing of a candidate consent form.

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<sup>18</sup> Note this statute's authority provided to the Superior Court for non-legislative elections. Subsection (e) provides as follows: "After hearing, the court shall issue findings of fact and a judgment, which shall supersede any certificate of election previously issued. If the court finds just cause, the court shall grant appropriate relief, which may include ordering a recount, or ordering a new election. If during the hearing the court receives credible evidence of criminal conduct, the court shall order a transcript of all or part of the testimony to be forwarded to the proper State's Attorney. If a new election is ordered, the court shall set a date for it, after consulting with the Secretary of State; in ordering a new election, the court shall have authority to issue appropriate orders, either to provide for special cases not covered by law, or to supersede provisions of law that may conflict with the needs of the particular situation."

<sup>19</sup> 17 V.S.A. § 2590(c) requires town clerks to safely store sealed containers of ballots and prohibits removal from a clerk's custody "except under court order, or by order of any authorized committee of the General Assembly."

As provided in the Vermont Constitution, it is ultimately up to the chamber to make the final determination in judging the contested election. The examples of recent contested legislative elections that are provided in this document demonstrate the variety of issues that a chamber may need to contend with to reach these substantial decisions involving constitutional representative government.

For example, in the 1977 House WDH-4 Nixon/Emond contest, research indicates that Candidate Emond won the *general election* by one vote; Candidate Nixon won the *recount* by one vote and was therefore seated on Day 1; *the House committee's own recount* determined that it was instead Emond who won by one vote; so, Rep. Nixon resigned prior to the House vote on the contested election, and the Governor appointed Emond to fill the vacancy. Journalized remarks reveal the strife of the ordeal. And although the House committee recommended the declaration of a vacancy to resolve Granville's 1961 Jarvis/Jennett contest; a referendum was suggested to resolve the 1973 Senate CHI Smith/Fayette contest; and a revote was considered in the 2025 House BEN-1 Cooper/Busa contest, to date there are no known instances in which a chamber of the Vermont General Assembly has declared a seat vacant<sup>20</sup> or attempted to order a referendum or revote to settle a contested legislative election.

### V. History of Vermont Contested Legislative Elections

The following sampling of contested legislative elections provides summaries of some of the more recent contested legislative elections in Vermont, and the end of this document provides a list of all of the currently known contested legislative elections in Vermont history, based on a review of journals and other historical records. Here are some notes for reviewing this document:

1. It has been House custom to seat on Day 1 the member who is certified the winner of the general election, in cases where there has been no recount; or to seat the recount winner, in cases of a recount.<sup>21,22</sup>
2. The basis for each contested legislative election petition is summarized in the examples provided. Issues include ballot security, checklist irregularities, and recount procedures.
3. In some cases, the chamber has conducted its own recount. Legislative recounts are **highlighted** in the text describing legislative action.

<sup>20</sup> In [17 V.S.A. ch. 53](#) (election vacancies), § 2623 provides the Governor with authority to fill a vacancy in a State legislative office, whereas § 2621 provides for a special election to fill a vacancy in Congressional office, with § 2622 providing the Governor with the authority to appoint an interim U.S. Senator pending the filling of the vacancy by special election. For an example of the U.S. Senate declaring a contested seat vacant to resolve a contested election, *see* the U.S. Senate's "[The Election Case of John A. Durkin v. Louis C. Wyman of New Hampshire \(1975\)](#)", summarized as the "[Closest Election in Senate History.](#)"

<sup>21</sup> An exception is the unusual case of 1982's Chittenden/ Kennedy election, which—as described *supra*—initially resulted in no certified winner on Day 1 due to the Superior Court's invalidation of the general election results, which the Vermont Supreme Court later held to be unconstitutional.

<sup>22</sup> *See also* the point of order challenging the Day 1 seating of the House member subject to a contested election in 2017 (Frenier/Davis), *infra*, which was ruled not well-taken.

**2025**  
**House Bennington-1 District**  
**(Cooper/Busa)**

General Election: **Cooper 1,265**; Busa 1,240

Recount: **Cooper 1,265**; Busa 1,242

1. Issues raised in petition: Inaccurate voter checklists resulting in more BEN-1 district voters having received and voted a BEN-5 district ballot than the BEN-1 margin of victory.<sup>23</sup> Petitioner requested a BEN-1 revote. *See* [Attorney General report](#).
2. Committee on Government Operations and Military Affairs special report:<sup>24</sup> Rep. Cooper duly elected and qualified. [2/7/25 House Journal pgs. 132–136](#).
3. Final House vote: Committee special report adopted; **Rep. Cooper retains seat**. [2/7/25 House Journal pg. 132](#).

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<sup>23</sup> Details: As a result of 2022 reapportionment, the Town of Pownal was split into two separate House districts (BEN-1 and BEN-5— *see* [17 V.S.A. § 1893b](#)) and after the 2024 General Election, the Town discovered that approximately 56 Pownal voters in the BEN-1 district received the BEN-5 district ballot (and approximately 42 of them voted in the BEN-5 election), and approximately 14 Pownal voters in the BEN-5 district received the BEN-1 district ballot.

<sup>24</sup> *See also* [this HGOMA webpage](#) and [this HGOMA webpage](#) for documents produced or acquired by the Committee on Government Operations and Military Affairs in relation to its consideration of this contested House election.



**2017**  
**House Orange-1 District**  
**(Frenier/Davis)**

General Election: Frenier 1,853; Davis 1,845

Recount: Frenier 1,852; Davis 1,845<sup>25</sup>

4. Issues raised in petition: Conduct of recount, including vote tabulator issues; counting of defective early voter absentee ballots. *See also* [response to petition](#) and [Attorney General report](#).<sup>26</sup>
5. House actions: House adopted [H.R.8](#) (establishing Special Recount Panel with authority to subpoena witnesses and ballots, conduct a full recount of the contested election, and report its findings and recommendations to the House) and [H.R.10](#) (policies and procedures to conduct recount).
6. Committee on Government Operations special report: Rep. Frenier duly elected and qualified.<sup>27</sup>
7. Final House vote: Committee special report adopted; **Rep. Frenier retains seat.** [2/22/17 House Journal](#), pgs. 308 and 309.

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<sup>25</sup> At the House's organization, a member raised a point of order that Rep. Frenier was not qualified to be seated, which the Sec. of State ruled not well taken. [1/4/17 House Journal pg. 1](#).

<sup>26</sup> *See also* [this overview](#), [these details](#), and [this memo](#).

<sup>27</sup> In accordance with [H.R.10](#), Part 2, Sec. V(c) (if seal or container from county recount is found to not be intact, the Panel recount shall not move forward and Rep. Frenier shall retain his seat), because on the morning of the scheduled Panel recount the Panel discovered that a ballot bag had been opened following the county recount, the Panel did not conduct a recount and the HGO Special Report recommended that Rep. Frenier be found to be duly elected and qualified. *See* [2/22/17 House Journal](#), pgs. 308 and 309.



2011

**House Windsor-Orange 1 District**  
**(Buxton/Ainsworth)**

General Election: Buxton 882; Ainsworth 881

Recount: Buxton 881; Ainsworth 880

1. Issues raised in petition: Voter qualifications; use of provisional ballots; security of ballots. *See* Attorney General report, [1/14/11 House Journal pgs. 51-56](#).
2. Committee on Government Operations special report: Rep. Buxton duly elected and qualified. [2/3/11 House Journal pgs. 132-133](#).
3. Final House vote: Committee special report adopted; **Rep. Buxton retains seat**. [2/3/11 House Journal pg. 132](#).

**1997**

**Senate Rutland District**

**(Maynard/Macaulay)**

General Election: Maynard 10,952; Macaulay 10,934

Recount: Maynard 10,978; Macaulay 10,976

1. Issues raised in petition: Incorrectly counted or missing votes; recount procedures. *See also* Attorney General report, [1/15/97 Senate Journal, pgs. 63-74](#).
2. Senate actions: Senate adopted [S.R.5](#), which created the Special Select Committee on Elections to examine all facts concerning the contested election, including the authority to subpoena witnesses and documents, and which was required to recommend to the Senate appropriate action to resolve this matter.<sup>28</sup>
3. Special Select Committee on Elections report: Sen. Maynard duly elected and qualified. [1997 Senate Journal pg. 96](#).
4. Final Senate vote: Special Select Committee report adopted;  
**Sen. Maynard retains seat. Id.**<sup>29</sup>

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<sup>28</sup> *See also* [1/15/97 Senate Journal pg. 59](#) for members appointed and materials referred.

<sup>29</sup> *See also* [1997 Senate Journal Index pg. 1801](#).

1985

**House Chittenden-Franklin-1 District**  
**(Woodward/Greene)**

General Election: Woodward 807; Greene 800

Recount: Woodward 803; Greene 801

1. Issues raised in petition: Counting errors in election or recount, or both; recount accuracy; failure of Superior Court to issue judgment.
2. House actions: House adopted [H.R.5](#), which authorized the Committee on Municipal Corporations and Elections to subpoena the ballots in this contested election (and the Stokes/Painter contested election) and related documents, and to be assisted by other members for equal political representation, and to count the ballots.
3. Committee recount and special report: Committee conducted a complete recount: Woodward 806; Greene 801. Rep. Woodward duly elected and qualified. [2/6/85 House Journal pg. 108](#).
4. Final House vote: Committee special report adopted; **Rep. Woodward retains seat.** *Id.*<sup>30</sup>

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<sup>30</sup> See also 1985 House Journal Index [pg. 952](#) and [pg. 930](#).

1985

## House Chittenden-4 District

(Stokes/Painter)

General Election: Painter 1,651; Stokes 1,632

Recount: Stokes 1,641; Painter 1,638

1. Issues raised in petition: Counting errors in election or recount, or both; recount accuracy; recount committee failure to examine ballots.
2. House actions: House adopted [H.R.5](#), which authorized the Committee on Municipal Corporations and Elections to subpoena the ballots in this contested election (and the Woodward/Green contested election) and related documents, and to be assisted by other members for equal political representation, and to count the ballots.
3. Committee recount and special report: Committee conducted a complete recount: Stokes 1,649; Painter 1,632. Rep. Stokes duly elected and qualified. [2/6/85 House Journal pgs. 107-108](#).
5. Final House vote: Committee special report adopted; **Rep. Stokes retains seat.** Id.<sup>31</sup>

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<sup>31</sup> See also 1985 House Journal Index [pg. 952](#) and [pg. 930](#).

**1983**

**House Chittenden 6-2 District**

**(Chittenden/Kennedy)**

General Election: Chittenden 788; Kennedy 783

Recount Order #1: Invalidated general election; ordered new election<sup>32</sup>

*No member seated for this district on the first day of session*<sup>33</sup>

Recount Order #2: Chittenden 788; Kennedy 783<sup>34</sup>

*Rep. Chittenden seated on Jan. 25, 1983*<sup>35</sup>

1. Background: This contested legislative election ultimately resulted in Supreme Court of Vermont (SCOV) caselaw invalidating the application of prior statutory law that a Superior Court relied upon to vacate the general election results for this legislative district and to order a new election to be held on Jan. 25, 1983. However, on the first day of the 1983 session—Jan. 5, 1983—that Superior Court order was still in effect, resulting in no candidate having received a certificate of election and accordingly, no member being seated for this district. Later in the month on Jan. 21, 1983, on appeal, the SCOV vacated the Superior Court order as an unconstitutional violation of legislative and judicial power, holding

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<sup>32</sup> See 1/4/83 CHI Sup. Ct. Order attached to petition, [1/25/83 House Journal pgs. 84-89](#).

<sup>33</sup> [1/5/83 House Journal pgs. 4-5](#).

<sup>34</sup> 1/24/83 CHI Sup. Ct. Order, [1/25/83 House Journal pgs. 78-80](#). These recount results, filed with the Sup. Ct. on Dec. 7, 1982, were also included in the 1/4/83 CHI Sup. Ct. Order (Recount Order #1).

<sup>35</sup> [1/25/83 House Journal pg. 72](#).

that the Superior Court did not have jurisdiction to adjudicate a challenge to a legislative election, nor did the Legislative Branch have authority to delegate that exclusive legislative power to the Judicial Branch.

Accordingly, a subsequent Superior Court order dated Jan. 24, 1983 certified the Dec. 7, 1982 recount results (Chittenden 788; Kennedy 783); Rep. Chittenden was seated on Jan. 25, 1983; and the House proceeded with its exclusive constitutional authority to judge this member's election upon Ms. Kennedy's petition.

2. Issues raised in petition: Voter qualifications (18 voters on checklist did not reside in the legislative district, and 10 of them voted in this election). Petitioner requested that the House declare the election void and order a new election. [1/25/83 House Journal pgs. 80 et seq.](#)<sup>36</sup>
3. House action: Petition referred to the House Committee on Municipal Corporations and Elections. [1/25/83 House Journal pg. 80.](#)
4. Committee special report: Rep. Chittenden duly elected and qualified. [2/1/83 House Journal pgs. 111-112.](#)
5. Final House vote: Committee special report adopted; **Rep. Chittenden retains seat.** Id.<sup>37</sup>

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<sup>36</sup> Attached to the petition was the SCOV's Kennedy v. Chittenden, 142 Vt. 397 (1983) (statutory law purporting to confer Superior Court general jurisdiction to hear and determine matters relating to elections and fashion appropriate relief—and Superior Court's application of it to this legislative election by vacating the general election results and ordering a new election—violated separation of powers because Vt. Const. Ch. II, § 14 provides the House with the exclusive authority to judge its members' elections and qualifications and the applicable statutory law therefore was an improper delegation of legislative powers to the Judicial Branch, and because the Vt. Const. requires that judicial decisions lead to a final, enforceable result that is not merely informative or advisory as described in In re Constitutionality of House Bill 88, 115 Vt. 524 (1949)).

<sup>37</sup> See also [House Journal Index pg. 803.](#)

1981

**Senate Lamoille District**  
**(Manchester/Hastings)**

General Election: **Manchester 5,671**; Hastings 150

1. Issue raised in petition: Failure to timely file a consent form for the primary election.<sup>38</sup>
2. Senate action: Referred election challenge to the Committee on Government Operations. [1/13/81 Senate Journal pgs. 16-17](#).
3. Committee special report: Reject challenge and allow Sen. Manchester to continue to serve as the duly elected member. [1/23/81 Senate Journal pgs. 63-66](#).
4. Final Senate vote: Committee's special report adopted;  
**Sen. Manchester retains seat. Id.**<sup>39</sup>

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<sup>38</sup> Among other details, the consent forms were unavailable at the time of Mr. Manchester's otherwise timely submission of his primary petition signatures. *See* Background in Committee's special report, [1/23/81 Senate Journal pgs. 63-66](#).

<sup>39</sup> *See also* [Senate Journal Index pg. 1127](#).



1977

## House Windham-4 District

(Nixon/Emond)

General Election: Emond by one vote

Recount: Nixon by one vote

1. Issues raised in petition: [not journalized] [1/11/77 House Journal pg. 51](#).
2. House actions: H.R.4 (Committee on Municipal Corporations and Elections resolution authorizing Committee to issue subpoenas to obtain production of ballots and other documents re: this contested election) was introduced; later ordered to lie; and finally, upon request, withdrawn. [1977 House Journal pgs. 64-65, 75, 101-102, and 114](#).
3. Final House result: According to [Rep. Nixon's 1/27/77 resignation letter](#),<sup>40</sup> the Committee conducted a recount and determined that Emond won by one vote, and **Rep. Nixon resigned** prior to the final House vote on this contested election. On the day of Rep. Nixon's resignation, the Governor appointed Mr. Emond to the vacancy, and **Rep. Emond was seated** the following day.<sup>41</sup> The Committee's special report was thereafter withdrawn.<sup>42, 43</sup>

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<sup>40</sup> For journalized member responses, see [1/27/77 House Journal pgs. 100-101](#).

<sup>41</sup> [1/28/77 House Journal pgs. 106-107](#).

<sup>42</sup> [2/1/77 House Journal pg. 121](#).

<sup>43</sup> See also [House Journal Index pg. 953](#).

1973

## Senate Chittenden District

(Smith/Fayette)

General Election: Fayette wins

Recount: Smith 19,319; Fayette 18,957

1. Issues raised in petition: Failure to secure the ballots between the general election and Smith's requested recount, resulting in the judge overseeing the recount to refuse to certify the recount results. Petition requested that the Senate A) refuse to acknowledge Smith's election and deny his seat; B) certify Fayette's general election win; or C) most preferably, declare the election void and direct a runoff election between the two candidates.
2. Senate actions: Senate adopted [S.R.6](#) (establishing a Special Election Committee to investigate the contested election, including the authority to subpoena witnesses and documents).
3. Special Committee individual member reports: The Chair and another member of the Special Committee recommended that a new election or referendum be held only in the Town of Essex, and that those vote results be added to the recount totals of the other District towns. Two other Special Committee members recommended instead that the recount results be affirmed. [1/12/73 Senate Journal pgs. 37-40](#).
4. Final Senate votes: A) S.R.7 (advisory referendum in Town of Essex) disagreed to; B) Fayette petition denied; and C) Smith election affirmed (**Rep. Smith retains seat**). [1/12/73 Senate Journal pgs. 40-43](#).<sup>44</sup>

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<sup>44</sup> See also [1973 Senate Journal Index pg. 875](#).

# **ATTACHMENT A: KNOWN CONTESTED VERMONT LEGISLATIVE ELECTIONS**

*[list will be updated as research continues]*

## **A. Recent Journalized Contested Legislative Elections (year, parties; chamber)**

1. 2025, Cooper/Busa (House)
2. 2017, Frenier/Davis (House)
3. 2011, Buxton/Ainsworth (House)
4. 1997, Maynard/Macaulay (Senate)
5. 1985, Woodward/Greene (House)
6. 1985, Stokes/Painter (House)
7. 1985, M. Powell/Harroun/J. Powell/Stanion (House)
8. 1985, Grimes/Chagnon (House)
9. 1983, Chittenden/Kennedy (House)
10. 1983, McCormack/Goodwin (House)
11. 1981, Sassi/Leavitt (House)
12. 1981, Manchester/Hastings (Senate)
13. 1981, Youngbaer/[unknown petitioner] (House)
14. 1979, Coy/Robinson (House)
15. 1977, Nixon/Emond (House)
16. 1977, Curran/[unknown petitioner] (House)
17. 1973, Smith/Fayette (Senate)
18. 1963, Lucier/Sargeant—*Rep. residency qualification* (House; *see* H.R.6)
19. 1963, McCandless/Landon—*Rep. residency qualification* (House; *see* H.R.7)
20. 1963, Ware/Howe—*Disputed ballot in election won by one vote* (House; *see* H.R.8)
21. 1961, Jarvis/Jennett—*Illegal ballots used in Granville's second round of balloting resulting in Rep. Jarvis winning, following a tie in first round; committee conducted recount and recommended declaring seat vacant; Ms. Jennett thereafter withdrew her petition* (House; *see* H.R.7)

## **B. Historical Records of Past Contested Legislative Elections (year, basis for petition; all House)**

22. 1939, polls closed too early
23. 1927, marking of ballots
24. 1919, tie vote
25. 1912, improperly marked ballots
26. 1908, election procedures (#1)
27. 1908, election procedures (#2)
28. 1906, holding office of profit or trust (#1)
29. 1906, holding office of profit or trust (#2)
30. 1906, election procedures
31. 1898, improperly rejected ballots
32. 1898, candidate qualifications
33. 1896, holding office of profit or trust
34. 1894, improperly counted ballots
35. 1892, improperly rejected ballots
36. 1890, voters balloted illegally
37. 1890, improperly marked ballots
38. 1888, mistake in counting votes
39. 1888, unqualified voters
40. 1886, holding office of profit or trust

41. 1884, holding office of profit or trust (#1)
42. 1884, holding office of profit or trust (#2)
43. 1882, voters balloted illegally
44. 1880, failure to take oath
45. 1880, elected after adjournment
46. 1878, meeting adjourned before Representative chosen
47. 1874, ballot cast by illegal voters
48. 1872, tie vote